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Dated: September 15, 2009  
Electronic Signature for William A. Di Bianca: / William A. Di Bianca /

Docket No.: SPINE 3.0-437 CPCPCPCPCPCPC I CON III  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In re Patent Application of:  
Errico et al.

Application No.: 10/663,488

Confirmation No.: 2425

Filed: September 16, 2003

Art Unit: 3738

For: INTERVERTEBRAL SPACER DEVICE  
HAVING AN ENGAGEMENT HOLE FOR  
MANIPULATION USING A SURGICAL  
TOOL

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Examiner: B. E.  
Pellegrino

**RENEWED PETITION UNDER 37 C.F.R. § 1.78(A)(3)**  
**TO CORRECT PRIORITY INFORMATION**

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**I. SUMMARY**

This renewed petition is submitted in response to a telephone discussion with Michelle R. Eason on September 11, 2009 to respectfully request reconsideration for the correction of the priority information in U.S. Patent Application 10/663,488 ("the '488 application"). Applicants originally filed a Petition to Correct Priority Information along with supporting documentation on March 30, 2009. Applicants received a response dated July 6, 2009 from the Office of Petitions dismissing the March 30 petition. The September 11 telephone conversation between Applicants' undersigned attorney and Mrs. Eason was to clarify that the incorporation by reference

statement in the last sentence of the first paragraph of the present application was included in the originally filed application and was not added after the filing date of the present application as stated in the July 6 response from the Office of Petitions.

Applicants submitted the March 30 petition to correct the relationship information in the original filing on September 16, 2003 and in the Amendment filed on August 2, 2006, for the applications from which benefit is claimed is believed to be incorrect and thus correction is sought. No new matter has been added by the filing of this petition and any previous amendments related to the correction of priority. The petition fee set forth in 37 C.F.R. § 1.17(t) of \$1,410.00 was provided on March 30, 2009.

Petitioner submits that the Domestic Priority Data as stated in the Corrected Filing Receipt (mailed April 23, 2004) is incorrect. Petitioner requests that the Domestic Priority Data be revised as shown in the attached "Initial" Application Data Sheet, in the Request for Corrected Filing Receipt and in the revisions to the specification in a Supplemental Amendment filed today, and any delay by Petitioner in submitting the correct priority data to the U.S. Patent & Trademark Office ("USPTO"), from the time the claim was due to the date the claim was filed, was unintentional.

## **II. FACTS**

A statement of domestic priority data, on the first page of the specification of the '488 application, filed September 16, 2003, included an incorrect claim for priority under 35 U.S.C. §120 which included the incorporation by reference statement "*All of the above mentioned applications are hereby incorporated by reference herein in their respective*

entireties". No Application Data Sheet was filed with the application.

Subsequent to the filing of the '488 application, the '488 application, along with all the related files, were transferred as just one part of a sizeable patent portfolio, to the law firm of Lerner, David, Littenberg, Krumholz and Mentlik, LLP ("Lerner, David"). A revocation and substitution of attorneys was executed by the assignee and received by the USPTO on March 3, 2005. A Notice of Acceptance of Power of Attorney was mailed on May 24, 2005 by the USPTO.

After the transfer of files, the prosecuting attorney at Lerner David recognized that the domestic priority information in the '488 application was incorrect. The prosecuting attorney filed an Amendment on August 2, 2006 listing incorrect domestic priority information.

The prosecuting attorney incorrectly claimed priority to U.S. Application 10/642,528 (filed August 15, 2003), now U.S. Pat. 7,160,327, and inadvertently filed the Amendment without this petition and related fee.

### **III. NATURE OF PETITION**

Petitioner respectfully submits this renewed petition in connection with the correction of domestic priority, asserting that the delay by Petitioner in submitting the correct priority data to the USPTO, from the time the claim was due and the date the claim was filed, was unintentional.

For the good cause shown, it is respectfully requested that the renewed Petition be granted and the priority corrected as shown in the "Initial" Application Data Sheet, Request for Corrected Filing Receipt and Amendment filed on March 30, 2009.

If there are any additional charges in connection with this requested renewed Petition, please charge Deposit Account No. 12-1095 therefor.

Dated: September 15, 2009

Respectfully submitted,

Electronic Signature:

/William A. Di Bianca /

William A. Di Bianca

Registration No.: 58,653

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